

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

MYRNA I. JOHNSON,

Plaintiff,

vs.

FRED MEYER STORES, INC., a
Delaware Corporation, and
JAIME SAN MIGUEL,

Defendants.

Case No. 1:04-CV-0008-RRB

**ORDER DENYING MOTION
TO DISMISS AT DOCKET 86
AND VACATING HEARING**

Before the Court are Defendants Fred Meyer Stores, Inc. and Fred Meyer supervisor Jaime San Miguel ("Defendants") with a Motion to Dismiss Wrongful Termination at Docket 86. Plaintiff Myrna I. Johnson ("Plaintiff") opposes at Docket 88.

The parties have already had the opportunity to fully brief the issues relating to Plaintiff's claim for breach of the covenant of good faith and fair dealing. Based on that briefing, the Court, on February 9, 2007, denied Defendants' motion for summary judgment on this claim.¹ Defendants' present motion essentially seeks reconsideration of the Court's earlier order.

¹ See Docket 81.

Because this matter has been fully briefed, oral argument is not necessary and the hearing scheduled on August 24, 2007, is **vacated**.

Federal Rule of Civil Procedure 60(b) allows a party to seek relief from judgment upon a showing of (1) mistake, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud or other misconduct; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) other "extraordinary circumstances" which prevented a party from making a timely appeal.²

Defendants do not assert any recognized ground for relief under Rule 60. Further, the time for filing dispositive motions has long since passed.³ Moreover, after carefully reviewing the briefing, the Court remains persuaded that Plaintiff does state a claim for breach of the covenant of good faith and fair dealing and that there are sufficient factual disputes surrounding the circumstances of Plaintiff's termination to permit the matter to proceed to trial on this single theory.

Accordingly, Defendants' Motion to Dismiss (Docket 86) is **DENIED**. The matter shall proceed in due course.

ENTERED this 21st day of August, 2007.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

² Fed. R. Civ. P. 60(b); United States v. Alpine Land & Reservoir Co., 984 F.2d 1047, 1049 (9th Cir. 1993).

³ See Docket 85.